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EXAMINER	
FERTIG, BRIAN E	
ART UNIT	PAPER NUMBER
3694	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	**Application No.**	**Applicant(s)**
	10/749,696	CREVELING ET AL.
	Examiner	**Art Unit**
	BRIAN FERTIG	3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 22 September 2008.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-20 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims are directed to a process (method). The Court of Appeals for the Federal Circuit in *In re Bilski*, Appeal No. 2007-1130, has affirmed that a statutory process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (i.e. the machine-or-transformation test). To qualify as a statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example, by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example, by identifying the material that is being changed to a different state.

Applicant is also directed to MPEP § 2173.05p, providing guidance with respect to reciting a product and process in the same claim and MPEP § 2111.02 [R3] providing guidance with respect to the effect of limitations within the preamble of a claim.

Examiner acknowledges Applicant’s amendment directed to performing a number of steps 'automatedly.' While such a recitation implies a machine, it is the Office's position that the machine must be positively recited within the claim. As such,

the Examiner respectfully suggests positively reciting the automated steps as being performed by a computer, computing apparatus, processor or similar.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-2, 6-11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,154,729 to Cannon (Cannon) in view of US Patent Applicant Publication 2002/0099649 to Lee (Lee).

<u>With respect to claim 1</u>

Cannon teaches:

A method for processing credit transactions, comprising:

storing a predetermined threshold ratio of disputed credit transactions to total credit transactions for a period of time (see col 3, lines 45-55, note that a stored threshold ratio is fairly suggested by the teaching that vendors with ‘excessive’ chargeback ratios are listed. The suggestion is fairly made by the need for there to be a measure –i.e. the predetermined threshold ratio- for determining what is ‘excessive’);

automatedly identifying a merchant with a disputed credit transaction in the period of time (see col 3, lines 45-55, note that merchants with ‘excessive’ chargebacks are listed on the report);

automatedly determining a number of the disputed credit transactions and a number of credit transactions involving the merchant in the period of time (see col 3, lines 45-55, note that the ratio calculated for the purposes of the report is that of chargebacks to transactions);

automatedly determining a ratio of the number of disputed credit transactions to the number of credit transactions for the merchant (see col 3, lines 45-55, note that the ratio calculated for the purposes of the report is that of chargebacks to transactions); and

Cannon does not explicitly teach:

automatedlv assessing a chargeback fee against the merchant for each disputed transaction involving the merchant that exceeds the predetermined threshold ratio, when the merchant's ratio is at least equal to the predetermined threshold ratio.

Lee teaches:

automatedlv assessing a chargeback fee against the merchant for each disputed transaction involving the merchant that exceeds the predetermined threshold ratio, when the merchant's ratio is at least equal to the predetermined threshold ratio (see par 19, note that both a fee per chargeback and a fine for too many chargebacks are both taught. The combination of these methods of penalizing chargebacks fairly suggests charging a fee for each transaction that exceeds a threshold in so far as the fee per charge back suggests the 'for each' component and the fine for having too many suggests applying the fee above a threshold).

It would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to have provided Cannon with the fee and fine features of Lee in order to have provided merchants with an incentive to take action to reduce chargebacks as taught implicitly by Lee since fines escalate if chargebacks continue unabated.

<u>With respect to claim 2</u>

Cannon in view of Lee teaches:

The method of claim 1 (see rejection of claim 1 above), wherein the period of time comprises thirty days (see Cannon col 3, lines 35-45 and col 4, lines 43-57, note the teaching of a monthly reporting cycle).

(see rationale supporting obviousness and motivation to combine of claim 1 above)

<u>With respect to claim 6</u>

Cannon in view of Lee and Sharper teaches:

The method of claim 1 (see rejection of claim 1 above), further comprising: establishing the predetermined threshold ratio based on an average transaction volume of the merchant (See Cannon col 3, lines 45-55 and col 4, lines 43-57, note that ratio relates chargebacks to transactions. As such, it is fairly suggested that establishment of the ratio is based upon the transaction volume of the merchant since the volume is the factor by which the standard for 'excessive' is defined)

(see rationale supporting obviousness and motivation to combine of claim 1 above)

<u>With respect to claim 7</u>

Cannon in view of Lee teaches:

The method of claim 1 (see rejection of claim 1 above), further comprising:

storing a threshold number of time periods in which the ratio of disputed credit transactions to total credit transactions may exceed the threshold ratio (see Lee par 19-21, note that Lee teaches the after months of escalating fines, the merchant may lose the privilege of receiving payment through credit card issuers. As such, this fairly teaches a second threshold based apon the length of time the merchant exceeds the predetermined threshold. Note further that a second threshold based on time is also an obvious duplication of the threshold taught by Cannon above, particularly in view of the time based penalty of Lee);

automatedly determining a number of time periods in which the ratio of the number of disputed credit transactions to the number of credit transactions for the merchant is at least equal to the threshold value (see Lee par 19-21); and said assessing further comprising:

automatedly assessing the chargeback fee against the merchant only for each disputed transaction that exceeds the predetermined threshold ratio, when the ratio is at least equal to the predetermined threshold ratio for the period of time and the number of time periods for the merchant is at least equal to the threshold number of time periods (see Lee par 19 in combination with 21, note that penalizing a merchant with fines is know and when combined with the period of time measure taught by Lee fairly suggests charging a fine based upon the number of time periods the merchant exceeds the threshold).

(see rationale supporting obviousness and motivation to combine of claim 1 above)

With respect to claim 8

Cannon in view of Lee teaches:

The method of claim 7 (see rejection of claim 7 above), wherein the threshold number of time periods is greater than one (see Lee par 21, note that the second threshold of Lee is reached after ‘months’ of escalating fines).

(see rationale supporting obviousness and motivation to combine of claim 1 above)

With respect to claim 9

Cannon in view of Lee teaches:

The method of claim 8 (see rejection of claim 8 above), further comprising, before the assessing: generating a notice for transmission to the merchant when the number of time periods for the merchant is greater than zero and less than the threshold number of time periods, the notice including: the ratio of the number of disputed credit transactions to the number of credit transactions for the merchant, the predetermined threshold ratio, the number of time periods for the merchant and the threshold number of time periods (see Lee par 19-21, note that before implementing the time based penalty, the merchant was levied a series of fines, fairly suggesting the generation and transmission of a notice. Note that the contents of the claimed notice have been considered, but are non-functional descriptive material in so far as the notice could contain any material and the claimed invention would still operate the same. As such, the contents of the notice have not been given patentable weight so as to distinguish Applicant's claimed invention from the prior art).

(see rationale supporting obviousness and motivation to combine of claim 1 above)

<u>With respect to claim 10</u>

Cannon in view of Lee teaches:

The method of claim 9 (see rejection of claim 9 above), further comprising: transmitting the notice to the merchant (see Lee par 19-21, note that before implementing the time based penalty, the merchant was levied a series of fines, fairly suggesting the generation and transmission of a notice to the merchant).

(see rationale supporting obviousness and motivation to combine of claim 1 above)

<u>With respect to claim 11</u>

Cannon in view of Lee teaches:

> The method of claim 8 (see rejection of claim 8 above), further comprising: generating a notice for transmission to the merchant when the number of time periods for the merchant is greater than zero and less than the threshold number of time periods, the notice including at least proposed business solution for reducing the number of disputed credit transactions involving the merchant (see Lee par 19-21, note that before implementing the time based penalty, the merchant was levied a series of fines, fairly suggesting the generation and transmission of a notice. Note that the contents of the claimed notice have been considered, but are non-functional descriptive material in so far as the notice could contain any material and the claimed invention would still operate the same. As such, the contents of the notice have not been given patentable weight so as to distinguish Applicant's claimed invention from the prior art).

(see rationale supporting obviousness and motivation to combine of claim 1 above)

<u>With respect to claim 13</u>

Cannon in view of Lee teaches:

> The method of claim 7 (see rejection of clam 7 above), wherein the threshold number of time periods comprising comprises a threshold number of consecutive time periods (see Lee par 21, note that the second threshold of Lee is reached after ‘months’ of escalating fines).

(see rationale supporting obviousness and motivation to combine of claim 1 above)

6. Claims 3-5, 12, and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable Cannon in view of Lee and in further view of US Patent Application Publication 2004/0030644 to Sharper (Sharper).

<u>With respect to claim 3</u>

Cannon in view of Lee teaches:

> The method of claim 1 (see rejection of claim 1 above), but does not explicitly teach wherein the predetermined threshold ratio comprises three percent.

Sharper teaches:

> wherein the predetermined threshold ratio comprises three percent (see par 10, note that a limit may be set at 1-3%)

It would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to have provided Cannon in view of Lee with the particular threshold level taught by Sharper in order to have limited the percentage of chargebacks allowed to merchants as taught explicitly by Sharper (see par 10).

<u>With respect to claim 4</u>

Cannon in view of Lee teaches:

> The method of claim 1, but does not explicitly teach further comprising:
>
> establishing the predetermined threshold ratio based on an industry category including the merchant.

Sharper teaches:

establishing the predetermined threshold ratio based on an industry category including the merchant (see par 11, note that chargeback characteristics vary from industry to industry. A ratio based on industry category is thus fairly suggested to accommodate the differences between industries).

It would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to have provided Cannon in view of Lee with that industry differentiation of Sharper in order to have matched the risk of an industry with the level of fine as taught implicitly by Sharper since Sharper teaches the incidence of chargebacks varies across industries.

<u>With respect to claim 5</u>

Cannon in view of Lee and Sharper teaches:

The method of claim 4 (see rejection of claim 4 above), wherein the industry category comprising comprises a standard industrial classification code (see Lee par 101, note that the transaction summary variables include SIC codes, thus fairly suggesting their use in identifying the industry of the transaction).

(see rationale supporting obviousness and motivation to combine of claim 4 above)

<u>With respect to claim 12</u>

Cannon in view of Lee and Sharper teaches:

The method of claim 7 (see rejection of claim 7 above), wherein the threshold number of time periods is based on an industry category including the merchant.

(see par 11, note that chargeback characteristics vary from industry to industry. A ratio based on industry category is thus fairly suggested to accommodate the differences between industries).

(see rationale supporting obviousness and motivation to combine of claim 4 above)

<u>With respect to claim 14</u>

Cannon in view of Lee and Sharper teaches:

A method for processing credit transactions, comprising:

automatedly determining a ratio of disputed credit transactions to total credit transactions (see Cannon, col 3, lines 45-55, note that the ratio calculated for the purposes of the report is that of chargebacks to transactions) for each of a plurality of industry categories for a previous period of time (see Sharper, par 11, note that chargeback characteristics vary from industry to industry. A ratio based on industry category is thus fairly suggested to accommodate the differences between industries);

determining a first threshold ratio for a first of the industry categories based on said calculating automatedly determining (see Cannon, col 3, lines 45-55 in combination with Sharper par 11, note that a threshold ratio is fairly suggested by the teaching that vendors with 'excessive' chargeback ratios are listed. The suggestion is fairly made by the need for there to be a measure –i.e. the predetermined threshold ratio- for determining what is 'excessive', note further the industry discussion of Sharper above) ;

determining a second threshold ratio, lower than the first threshold ratio, for a second of the industry categories based on said calculating, the second of the industry categories having a lower ratio of disputed credit transaction to total credit transactions in the previous period of time than the first of the industry categories (see Cannon, col 3, lines 45-55 in combination with Sharper par 11, note that a plurality of threshold ratios is fairly suggested by the combination of these teachings since Sharper teaches that chargeback characteristics vary from industry to industry.)

(See rationale supporting obviousness and motivation to combine of claims 1 and 4 above)

<u>With respect to claim 15</u>

Cannon in view of Lee and Sharper teaches:

The method of claim 14 (see rejection of claim 14 above), further comprising:

automatedly determining a ratio of disputed credit transactions to total credit transactions for a merchant in the first of the industry categories (see Cannon col 3, lines 45-55, in combination with Sharper par 11); and

automatedly assessing a fee when the ratio of disputed credit transactions to total credit transactions is at least equal to the first threshold ratio (see Lee par 19)

(see rationale supporting obviousness and motivation to combine of claims 1 and 4 above)

With respect to claim 16

Cannon in view of Lee and Sharper teaches:

The method of claim 15 (see rejection of claim 15 above), wherein the fee is assessed for each disputed credit transaction that exceeds the first threshold ratio (see Lee par 19, note that both a fee per chargeback and a fine for too many chargebacks are both taught. The combination of these methods of penalizing chargebacks fairly suggests charging a fee for each transaction that exceeds a threshold in so far as the fee per charge back suggests the 'for each' component and the fine for having too many suggests applying the fee above a threshold).

(see rationale supporting obviousness and motivation to combine of claims 1 and 4 above)

With respect to claim 17

Cannon in view of Lee and Sharper teaches:

The method of claim 14 (see rejection of claim 14 above), further comprising:

determining a first threshold number of time periods in which the ratio of disputed credit transactions to total credit transactions for a merchant in the first of the industry categories exceeds the first threshold ratio, based on said calculating (see Lee par 19-21, note that Lee teaches the after months of escalating fines, the merchant may lose the privilege of receiving payment through credit card issuers. As such, this fairly teaches a second threshold based apon the length of time the merchant exceeds

the predetermined threshold. Note further that a second threshold based on time is also an obvious duplication of the threshold taught by Cannon above, particularly in view of the time based penalty of Lee, see also Sharper par 11); and

determining a second threshold number of time periods, lower than the first threshold number of time periods, in which the ratio of disputed credit transactions to total credit transactions for a merchant in the second of the industry categories may exceed the second threshold ratio, based on said calculating (see Lee par 19-21 and Sharper par 11).

(see rationale supporting obviousness and motivation to combine of claims 1 and 4 above)

<u>With respect to claim 18</u>

Cannon in view of Lee and Sharper teaches:

The method of claim 17 (See rejection of claim 17 above), further comprising:

automatedly determining a ratio of disputed credit transactions to total credit transactions for the merchant for a plurality of previous time periods (see Cannon col 3, lines 45-55, note that the ratio calculated for the purposes of the report is that of chargebacks to transactions and Lee par 18-21);

automatedly determining a number of time periods in which the ratio of disputed credit transactions to total credit transactions of the merchant is greater than the first threshold ratio (see Cannon col 3, lines

45-55, note that the ratio calculated for the purposes of the report is that of chargebacks to transactions and Lee par 18-21); and

automatedly assessing a chargeback fee if the merchant's current ratio of disputed credit transactions to total credit transactions is at least equal to the first threshold ratio and the number of time periods for the merchant is at least equal to the first threshold number of time periods (see Lee see Lee par 19 in combination with 21, note that penalizing a merchant with fines is know and when combined with the period of time measure taught by Lee fairly suggests charging a fine based upon the number of time periods the merchant exceeds the threshold).

(see rationale supporting obviousness and motivation to combine of claims 1 and 4 above)

<u>With respect to claim 19</u>

Cannon in view of Lee and Sharper teaches:

The method of claim 18 (see rejection of claim 18 above), further comprising:

generating a notice for transmission to the merchant when the merchant's current ratio of disputed credit transactions to total credit transactions is at least equal to the first threshold ratio and the number of time periods for the merchant is less than the first threshold number of time periods, including a predetermined period of time in which the merchant must lower their ratio of disputed credit transactions to total credit transactions to avoid chargeback fees (see Lee par 19-21, note that

before implementing the time based penalty, the merchant was levied a series of fines, fairly suggesting the generation and transmission of a notice. Note that the contents of the claimed notice have been considered, but are non-functional descriptive material in so far as the notice could contain any material and the claimed invention would still operate the same. As such, the contents of the notice have not been given patentable weight so as to distinguish Applicant's claimed invention from the prior art).

(see rationale supporting obviousness and motivation to combine of claims 1 and 4 above)

With respect to claim 20

Cannon in view of Lee and Sharper teaches:

An apparatus for processing credit transactions, comprising:

a processor (fairly suggested by the server, see Cannon, col 2, lines 38-50);

a memory operative with the processor (fairly suggested by the server, see Cannon, col 2, lines 38-50) to store and retrieve a sequence of processing instructions that enable the processor to:

automatedly determine an average ratio of disputed credit transactions to total credit transactions (see Cannon, col 3, lines 45-55, note that the ratio calculated for the purposes of the report is that of chargebacks to transactions) for each of a plurality of industry categories

(see Sharper, par 11, note that chargeback characteristics vary from industry to industry. A ratio based on industry category is thus fairly suggested to accommodate the differences between industries);

generate a threshold ratio of disputed credit transactions to total credit transactions ratio for a first of the industry categories based on its an automatedly determined average ratio of disputed credit transactions to total credit transactions (see Cannon, col 3, lines 45-55 in combination with Sharper par 11, note that a threshold ratio is fairly suggested by the teaching that vendors with ‘excessive’ chargeback ratios are listed. The suggestion is fairly made by the need for there to be a measure –i.e. the predetermined threshold ratio- for determining what is ‘excessive’, note further the industry discussion of Sharper above);

automatedly determine a ratio of disputed credit transactions to total credit transactions for a merchant in the first of the industry categories (see Cannon col 3, lines 45-55, in combination with Sharper par 11); and

automatedly assess a fee to the merchant when the merchant's ratio of disputed credit transactions to total credit transactions is greater than the threshold ratio of disputed credit transactions to total credit transactions, the fee applied to each disputed transaction involving the merchant that causes the merchant to exceed the threshold ratio of disputed credit transactions to total credit transactions (see par 19, note

that both a fee per chargeback and a fine for too many chargebacks are both taught. The combination of these methods of penalizing chargebacks fairly suggests charging a fee for each transaction that exceeds a threshold in so far as the fee per charge back suggests the 'for each' component and the fine for having too many suggests applying the fee above a threshold).

(see rationale supporting obviousness and motivation to combine of claims 1 and 4 above)

Response to Arguments

7. Applicant's arguments, filed 9/22/2008, with respect to 35 USC 112, second paragraph, have been fully considered and are persuasive. The rejection based upon 112, second has been withdrawn.

8. The balance of Applicant's arguments filed 9/22/2008 have been fully considered but they are not persuasive. With respect to Applicant's argument that Applicant's amended claims are in compliance with 35 USC 101, the Examiner respectfully disagrees. The Court in *In re Bilski* affirmed the machine-or-transformation test which requires that the claimed method be tied to a second statutory category by, for example, a particular machine. Applicant's amended claims imply a machine, but do no positively recite it. Examiner respectfully suggests positively reciting the automated steps as being performed by a computer, computing apparatus, processor or similar.

9. With respect to Applicant's argument that the claimed ‘disputed’ transaction is patently distinguishable from the ‘chargebacks' taught by the references above, the Examiner respectfully disagrees. Lee teaches the link between disputed transactions and chargebacks at par 17, "a chargeback is a charge onto a merchant for the amount of a purchase that has previously been charged . . . and successfully disputed by the customer”. The Examiner acknowledges that one of the aims of Applicant’s invention is the avoidance of costs associated with dispute resolution, but respectfully observes that such a goal has not been positively captured as a positive limitation within the current claims.

10. With respect to Applicant’s argument that the claimed threshold is distinguishable over the ratio taught by the combined references, the Examiner respectfully disagrees. Applicant argues that Cannon teaches normalization of the ratio by sales as distinguishable from the number of 'disputed credit transactions' of claim 1. Examiner respectfully observes that claim 1 normalizes the threshold ration by the 'total credit transactions' and 'number of credit transactions'. As such the "number of disputed transactions" is claimed only in the numerator of the ratio, not as the basis for normalization (i.e. denominator) comparable to the sales of Cannon. Even if Applicant’s position were correct (which the Examiner does not concede), a calculation of the ratio based on sales volume is proportional to the number of transaction, and thus fairly suggesting it.

11. With respect to Applicant's argument that the claimed fee assesment is distinguishable from the combined references, Examiner respectfully disagrees. Lee

teaches both a fee per chargeback and a fine for too many chargebacks. The combination of these methods of penalizing chargebacks fairly suggests charging a fee for each transaction that exceeds a threshold in so far as the fee per charge back suggests the 'for each' component and the fine for having too many suggests applying the fee above a threshold.

12. With respect to Applicant's arguments the Sharper fails to cure the deficiencies of Cannon and Lee, the Examiner respectfully observes that in light of the discussion above, Cannon and Lee do not suffer deficiencies. Examiner acknowledges Applicant's assertion that Sharper does not teach certain of the claimed features for which Examiner relies on Sharper, but since Applicant has not provided specific arguments to support this position, Examiner is not in a position to specifically respond.

13. With respect to Applicant's traversal of Examiner's use of Official Notice, Examiner respectfully disagrees, but upon reconsideration, has found teaching in the art of record rendering the limitations of claim 6 obvious. The basis for the rejection of claim 6 has been changed accordingly.

Examination Note

14. As briefly discussed above, Examiner notes that one of the aims of Applicant's invention is the avoidance of costs associated with dispute resolution (see, at least, par 15 of Applicant's Specification). Examiner also observes that the art of record, appears to be silent as to cost avoidance related to dispute resolution. In the case of Lee, dispute resolution is taught to be performed by the prior art in the course of assessing

fees and fines. As such, the Examiner respectfully suggests, to the degree supported by applicant's specification, the addition of a positively recited limitation (i.e. not a statement of intended use) directed to dispute resolution fee avoidance, in combination with the limitations already recited.

Inquiry

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN FERTIG whose telephone number is (571)270-5131. The examiner can normally be reached on Monday - Friday 8:30am to 5:00pm EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B.F./

/James P Trammell/
Supervisory Patent Examiner, Art Unit 3694